

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 817 of 1997

in

SPECIAL CIVIL APPLICATION No 8680 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

G S R T C

Versus

STATE TRANSPORT WORKS UNION

Appearance:

M/S THAKKAR ASSOC. for Appellant
M/s T.R.Misra, for Respondent.

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 02/02/98

ORAL JUDGEMENT

Admitted. Mr.T.R.Mishra, learned counsel for the

respondents appears and waives service of notice of admission. In the facts and circumstances of the case, the matter is taken up to day for final hearing.

This appeal is filed against the judgment and order passed by the learned Single Judge in Special Civil Application No. 8680 of 1996 decided on April 30, 1997. That petition was filed by the appellant-original petitioner against an award passed by the Presiding Officer, Labour Court, Ahmedabad in Reference (LCA) No.797 of 1990 on May 31, 1996. By that award the respondent employee was ordered to be reinstated in service with payment of back wages to the extent of 30%. An amount of costs of Rs.251/- was also awarded.

The learned Single Judge after hearing the parties held that the finding recorded by the Labour Court regarding misconduct on the part of the employee was well founded and did not require interference. In view of the finding of misconduct, the learned Single Judge observed that the Labour Court was not justified in exercising powers under Sec.11-A of the Industrial Disputes Act, 1997 and that it was not a fit case wherein re-instatement should have been granted. He, therefore, set aside the order of re-instatement and instead, passed an order directing the appellant to pay back wages of 50%. Against that order, the present Letters Patent Appeal is filed.

The learned counsel for the appellant contended that amount comes to Rs.1.79 lacs. According to him, even if the order of reinstatement was to be implemented and the employee would have worked till he reached the age of superannuation, he would not have got that much amount by way of salary. The said statement, however, is disputed by the learned counsel for the respondent-workman. The counsel for the appellant also contended that there is an error apparent on the face of the record committed by the learned Single Judge in not considering the fact that even in past, there were as many as 31 defaults which amounted to misconduct on the part of the department. Departmental proceedings were taken and the charges were also proved. He, therefore, submitted that this was not a fit case in which amount of 50% could have been ordered to be paid by the Corporation.

Mr. Mishra, learned counsel, however, submitted that the learned Single Judge considered the facts and circumstances and in exercise of the discretion when the learned Single Judge has passed order, it may not be

interfered with by the appellate court.

Having heard the learned counsel for the parties and considering the facts and circumstances of the case in light of the fact that in past the respondent had committed about 31 defaults of misconduct and departmental inquiry was initiated against him and the charges were proved, it would be in interest of justice if instead of payment of 50% back wages, the appellate Corporation is directed to pay 40% back wages. So far as refusal of reinstatement is concerned, there is no appeal by the workman and in our opinion rightly he has not filed any appeal. Hence, the following order.

The appeal is partly allowed and the appellate Corporation is directed to pay 40% of back wages instead of 50%. Rest of the order passed by the learned Single Judge is not disturbed. The appeal is partly allowed. In the facts and circumstances of the case, no order as to costs.

Dt. 2.2.1998. (C.K.THAKKER J.)

(A.L.DAVE J.)

GHB/OK/T